IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 18448 of 2004(U)

OS.50/2003 of MUNSIFF'S COURT, PAYYOLI
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PETITIONER:

ABDULLA, S/O. SOOPY HAJI,
AGED 63 YEARS, MEKKUNNELKANDI, VELLIYODE,
VILAYATTUR AMSOM, DESOM, KOYILANDY TALUK.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENT:

IBRAYI, S/O. SOOPY HAJI,
AGED 65 YEARS, MEKKUNNELKANDI, VELLIYODE,
NOW RESIDING AT PALAMADATHIL, IRINGATHU AMSOM,
DESOM, KOYILANDY TALUK.

BY ADV. SRI.C.C.ABRAHAM
SRI.DILEEP P.PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.18448/04

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF APPLICATION TO REMIT THE COMMISSION REPORT IN O.S.50/03 AND AFFIDAVIT IN SUPPORT THEREOF DT.18.5.04

/true copy/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.18448 OF 2004

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DATED THIS THE 29TH MAY, 2007

J U D G M E N T

The grievance of the petitioner who is the defendant in the suit is that even as the application Ext.P1 filed by him for remitting the commissioner's report to the commissioner so that the commissioner will report on the various aspects mentioned in the work memo submitted before him by the petitioner was pending, the learned Munsiff has listed the suit for trial.

2. A detailed counter affidavit has been filed by the respondent who is the plaintiff in the suit. It is not disputed that the learned Munsiff had before him Ext.P1 application when the suit was listed for trial. The contention is only that Ext.P1 is a method for protracting the proceedings in the suit.

3. Heard both sides.

4. The petitioner has a specific averment that he submitted work memo before the commissioner as permitted by the court. That averment is not seen disputed in the detailed counter affidavit. In fact, in paragraph 8, the respondent has inter alia stated that he has no objection in remitting the commissioner's report or even appointing a fresh commissioner at the cost of the petitioner. Apart from the

consent of the respondent, I feel that the learned Munsiff should have passed some orders on Ext.P1 application before proceeding to list the suit for trial.

Under these circumstances, the Writ Petition is disposed of directing the learned Munsiff to hear the parties and pass orders on Ext.P1 before trial of the suit is taken up. Orders as directed above will be passed at the earliest and at any rate within one month of receiving copy of this judgment. No costs.

(PIUS C. KURIAKOSE, JUDGE)

tgl